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## **BY CM/ECF**

July 19, 2022

**MEMO ENDORSED**

The Honorable Katherine Polk Failla  
United States District Judge  
Southern District of New York

RE: *Azor-El, et al. v. City of New York, et al.*, 1:20-cv-03650-KPF (and related cases)  
Joint Letter Application to Modify Scheduling Order and Status Update

Dear Judge Failla:

The undersigned represent the parties in these consolidated putative class action cases involving conditions of confinement at Rikers Island during the COVID-19 pandemic. We write jointly to provide the Court with an update on this case and to request an extension of two deadlines set out in the Civil Case Management Plan and Scheduling Order.

Plaintiffs have served additional written discovery requests, including requests for production and interrogatories, in accordance with Paragraphs 8(a)-(b) of the Court's Scheduling Order. (Dkt. 154.) The City is making progress in planning its e-discovery search and production.

Under Paragraph 4 of the Court's Scheduling Order, Plaintiffs respectfully move this Court to amend the deadline for seeking leave to amend to August 18, 2022, an extension of four weeks.

In recent weeks, Plaintiffs' counsel have been occupied with preparation for a jury trial that was continued shortly before it commenced. Given the scope and breadth of this matter, Plaintiffs' counsel need additional time to evaluate potential amendments to the governing Complaint. Plaintiffs do not believe these amendments would significantly expand the existing scope of discovery (which already seeks information pertaining to all inmates in DOC custody during COVID), or prevent the parties from moving forward on existing discovery. Plaintiffs' counsel are presently researching potential amendments that may add several named plaintiffs/proposed class representatives, clarify the class definition, and/or add claims under state law. Whether these and/or other amendments are sought, the fundamental nature of this case will remain the same: the lawfulness of conditions of confinement in NYCDOC facilities in light of COVID. Examination of these systemic issues will rely on largely the same discovery, regardless of the number of named plaintiffs and the exact legal theories, as this case already seeks class-wide treatment for all inmates during the pandemic.

Defendants consent to the Plaintiffs' requested extension of the deadline for amendment of the Complaint with the understanding that it will not, in fact, significantly expand the scope of discovery. Defendants are particularly concerned that, once the e-discovery process is begun in earnest, a subsequent expansion of the subject matter and of the number of issues in this case through an amendment would significantly impede the Defendants' ability to review what is expected to be a large volume of electronic records.

Further, the parties agree that the best way to proceed with medical records discovery under Paragraph 6 of the Scheduling Order is to expand the order the Court has already entered to all named Plaintiffs. (Dkt. 103.) The parties also wish to enter a clawback agreement and agreement under Fed. R. Civ. P. 502. Because the terms of these documents will require review by the City's Law Department and conferral with newly-designated e-discovery counsel, Defendants move for, and Plaintiffs consent to, a 14-day extension of the deadlines under Paragraphs 6 and 7(a)-(d) of the Scheduling Order, up to and including August 4, 2022.

In summary, the parties consent to motions to amend the Scheduling Order as follows:

- Paragraph 4 (leave to amend/join parties): August 18, 2022
- Paragraph 6 (HIPAA-qualified order): August 4, 2022
- Paragraphs 7(b)-(d) (various discovery logistics): August 4, 2022

We thank the Court for its consideration.

Respectfully submitted,

KEENAN & BHATIA, LLC

By: /s/ Sonal Bhatia & E.E. Keenan  
Attorneys for Plaintiffs

HON. SYLVIA O. HINDS-RADIX

By: /s/ Chuck Orsland & David Thayer  
Attorneys for Defendants

Cc: Counsel of Record (by ECF)

Application GRANTED. The requested extensions of the deadlines and requested amendments to the scheduling order (Dkt. #154) are granted.

The parties are directed to send the Court a proposed order to expand the scope of the Court's prior order to produce and qualified protective order under HIPAA. (Dkt. #103).

The Clerk of Court is directed to terminate the motion pending at docket entry 155.

Dated: July 20, 2022  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE